IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Karla Williams, et al.
Serial No. :	09/832,709
Title:	Fibrous Absorbent Articles Having Malodor Counteractant Ability and Method of Making Same
Filed:	April 11, 2001
Examiner:	Stephens, Jacqueline
Art Unit:	3761
Confirmation No. :	1658
Customer No. :	27,623

Attorney Docket No.: 460.2050USU

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Commissioner for Patents
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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir:

In response to the Final Action ("Action") mailed April 21, 2006, Applicants respectfully request review of the rejections in the above-referenced application.

No amendments are being filed with this request.

This request is being filed with a Notice of Appeal. There are no other related appeals.

REASONS FOR REQUEST FOR REVIEW

Claims 1, 3, 5 through 7, 10 through 15, 20 through 24, and 26 through 30 are pending in the application. All pending claims have been rejected in the Final Action. Claims 2, 4, 8, 9, 16 through 19, and 25, were canceled by previous amendment. The previously-indicated allowability of claims 26 and 27 was withdrawn by the Examiner in a previous Action.

Claims 1, 3, 5 through 7, 10 through 15, 20 through 24, and 26 through 30 stand rejected from an earlier Action under the judicially-created doctrine of obviousness-type double patenting over claims 1 through 13 of U.S. Patent No. 6,635,205 to Williams et al. (Williams). The Final Action mailed on April 21, 2006, did not address whether the double patenting rejections were maintained or withdrawn. Applicants' arguments to overcome the double patenting rejections were provided in the Request for Reconsideration mailed on January 19, 2006, on pages 8 through 13. Briefly, the independent claims in Williams are directed to a *method of manufacturing* a catamenial/tampon product. This is in contrast with the present claims that recite a tampon or fibrous absorbent *product* (claims 1, 3, 5, 6, 7, 10 through 15, 20 through 23, and 28 through 30) and a *method of deodorizing* a vaginal area (claims 24, 26 and 27). Applicants would respectfully submit that the arguments presented in the Request for Reconsideration clearly overcome the double patenting rejections over Williams, and request that the panel reconsider and withdraw the double patenting rejections.

The Action asserts that claims 1, 3, 5 through 7, 10 through 15, 20 through 24, and 26 through 30 are rendered obvious over U.S. Patent No. 5,417,224 to Petrus et al. (Petrus) (Final Action mailed April 21, 2006, at page 3). The relevant claims are summarized in the Request for Reconsideration mailed on January 19, 2006 (pages 9 through 11). A detailed argument describing the differences between the present invention and the teaching of Petrus are on

pages 13 – 19 of the Request for Reconsideration. Briefly, the essence of Petrus's invention is a tampon having a cord that is looped through the body of the tampon to assist with insertion and removal, and having spermicides, anti-infective agents, and lubricants placed in particular regions of the tampon. Of particular relevance is that one of the lubricants mentioned by Petrus is glycerin, along with mineral oil and sorbic acid. Petrus then identifies other general categories of agents that can be added to specific regions of the tampon, including hormonal preparations, amino acids, antioxidants, preservatives, pH adjusters, and that "a deodorant, such as pectin, may also be added to the tampon for aromatic purposes." Beyond this brief mention, Petrus provides no further details about deodorants used in the tampon.

In contrast, the essence of the present invention is a tampon (or fibrous absorbent article) containing one or more malodor counteractants within a particular range. One of the claimed malodor counteractants is glycerin. The incidental overlap of glycerin appears to have given rise to the rejection.

The Action at page 3 acknowledges that "Petrus is silent about the counteractant material present in the absorbent," but adds that "glycerin is a lubricant but is additionally capable of absorbing odors," as taught in a secondary reference, U.S. 4,880,417 to Yabrov (an anal pad to absorb odors from flatus).

Applicants would respectfully submit that the overlap of glycerin (as a lubricant in Petrus and as a malodor counteractant in the present claims) is an incidental similarity that would not have taught or suggested the features of the present claims. Petrus, in fact, teaches away from the use of the lubricant as a malodor counteractant, emphasizing the advantage of placing a lubricant on "only the outer region" of the tampon (col. 8, lines 57 – 60), where the outer region is "10% to 20% of said diameter [of the tampon] directly adjacent to the outer surface" (col. 10, lines 6 – 7). Petrus further provides a means to add

lubricant to just the outer region, and the properties it provides, by teaching that "sonic placement of lubricant within only the outer region ensures that any tears, holes, or imperfections in the sponge-like porous material will be fully sealed near the member surface" (col. 6, line 37; col. 7, lines 2 – 5). Petrus' brief mention of a deodorant "such as pectin" only underscores the fact that Petrus did not teach or suggest glycerin as both a lubricant and deodorant. And neither Petrus nor Yabrov provide a motivation for the skilled artisan to combine Yabrov's teaching of glycerin to absorb odors from flatus with Petrus's tampon designed for easy insertion and removal having glycerin or another lubricant within its outer layer.

Moreover, Petrus never claims nor suggests an amount or range of a malodor counteractant material for a tampon. The Action, however, asserts that the specific amounts claimed are obvious because Petrus discloses the "general conditions" of the claims, citing *in re Aller*, 105 USPQ 233(CCPA 1955). Applicants would respectfully draw attention to the argument in the Request for Reconsideration of January 19, 2006 on pages 17 – 18. Briefly, in *Aller*, applicants claimed a process that was otherwise identical to the prior art except to specify lower temperatures and higher sulfuric acid concentrations. In contrast, Petrus neither claimed or even described a specific amount or range of deodorant. Contrary to the Action's inference that the claimed amounts of malodor counteractant are an obvious matter, the claimed amounts of malodor counteract materials in the tampon or fibrous absorbent article in the present invention are not arbitrary. As disclosed on pages 18 – 19 (and Figs. 2 and 3) of the present application, the use of a malodor counteractant in the claimed amounts produces a tampon or fibrous absorbent article having exceptional malodor counteractant ability. Applicants respectfully submit that the Action fails to describe a motivation for the skilled artisan to select the particular types and amounts of malodor counteractant materials recited in the claims.

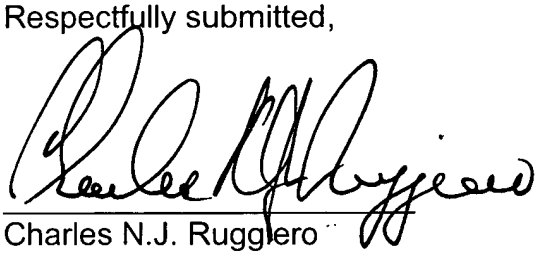
The same arguments would apply to claims 24, 26, and 27, which recite a method of deodorizing a vaginal area with a tampon or fibrous absorbent article having malodor counteractant materials.

The Final Action briefly and separately addresses dependent claim 14, asserting that Petrus discloses that "the fragrance was in liquid form" at col. 7, lines 60 – 67. Applicants would respectfully draw attention to the arguments presented in the January 19, 2006 Request for Reconsideration at pages 18 – 19.

Accordingly, it is respectfully submitted that Petrus does not teach or suggest the tampon or fibrous absorbent article having malodor counteractants, or the method of using such products to deodorize a vaginal area, and that the final rejection is thus erroneous. Applicants therefore would request the panel to reconsider and withdraw the rejections to claims 1, 3, 5 through 7, 10 through 15, 20 through 24, and 26 through 30, and to pass the present application to allowance.

July 21, 2006
Date

Respectfully submitted,



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